IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10432 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SURJIBHAI PANCHIABHAI & 6 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
NOTICE NOT RECD BACK for Petitioner(s) : 1 - 7.MR MM JADEJA for Petitioner(s) : 1 - 7.
MR Neeraj Soni, AGP for Respondent(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 30/11/2006

ORAL JUDGMENT

1. The short facts of the case are that the petitioners who are tribals have approached this Court contending, inter alia, that they are

cultivating the lands of the Forest at village Samarpada Taluka Dediapada, District Bharuch since the period prior to 1961. As per the petitioners, when they were cultivating the land unauthorizedly the penalties were also recovered from them and some of the receipts are produced in the record of the present proceedings.

2. As per the petitioners, there is policy prevailing of the State Government that if the possession of Forest tribals of the forest land is for the period prior to 25.10.80, their possession is to be regularized subject to the limit as provided in the resolution of 8 acre per person. Copy of the government policy dated 6.10.92 is also produced on the record by the petitioners. As per the petitioners, instead of regularizing the possession of the petitioners as per the policy of the government, the officers of the Forest Department were trying to disturb the possession and, therefore, the petitioners had to prefer the present petition.

3. On behalf of the petitioners, the petitioner no.1 - Surjibhai Panchiyabhai is personally present with his friend Damjibhai Devjibhai. I have heard petitioner no.1 on behalf of all the petitioners since advocate Mr.Jadeja has expired. I have also heard Mr.Soni, learned AGP for the state authorities.

4. Upon hearing, it appears that there is no dispute on the policy of the State Government for regularizing the possession of the forest tribals who were cultivating the land prior to 25.10.80. There

is also no dispute on the point that if the possession is found of such forest tribals of prior to 25.10.80, their possession is to be regularized.

5. The petitioners have produced certain material including the receipts for recovery of the penalty which are of dates 4.4.74, 30.12.73, 14.6.72, 10.9.76, 12.4.78, 27.6.73 and 27.6.79, copy of whereof are produced from pages 26 to 30 in the compilation of the present petition. In the said receipts, different names are mentioned including Surjibhai Panchiyabhai, Hathaiya Ramjibhai, Kanubhai Revabhai, Divani Panchiya, Kamariya etc.,

6. Whether such receipts are genuine or relate to the very lands which are being cultivated by the petitioners or not would require detailed examination of the facts. Further, in addition to the receipts, the petitioners, if are in possession of the other proof showing the cultivation by them or their forefathers, of the land in question prior to 1980, would be required to produce the same before the authority. Even otherwise also, this Court would not be in a position to undertake the inquiry of examination of facts. Even as per the policy of the Government of 1992 the detailed examination of the document is required to be undertaken. It appears that uptil now no such inquiry is undertaken nor any affidavit-in-reply is filed on behalf of the respondents authority for controverting the statement made in the petition for cultivation of the land by petitioners and their forefather prior to 1980.

5. Therefore, under these circumstances and considering the aspects that policy of the Government is of regularizing the possession of forest tribals if found cultivating prior to 1980, it would be just and proper if the direction is given to the District Collector to either inquire himself or through the Committee as per the prevailing policy of the Government and to finalize the matter on the aspects of possession and of regularization of the lands which are being cultivated by the petitioners. Since the status-quo is already ordered by this court when the matter came to be entertained by this Court for the first time on 22.12.96 the said interim order can be allowed to continue till the matter is finalized as per the directions given hereinafter.

6. Under the above circumstances, I find that the following directions shall meet with the ends of justice.

(a) The petition shall be treated as a representation on behalf of the petitioners together with the documents produced in support of the case by the petitioners, for regularization of the possession of the lands which is part of forest land at village Samarpada, Taluka Dediapada District Bharuch. Such representation shall be treated as to the District Collector respondent no.3 herein.

(b) The District Collector may himself decide or refer the matter to the Committee

constituted for such purpose and such Committee shall examine the record produced by the petitioners as well as the relevant record if available of the Forest Department concerning to the area.

(c) The Collector/Committee shall also verify the genuineness of the receipts produced by the petitioners or any other receipts which may be produced by the petitioners.

(d) Such District Collector / such Committee shall also give opportunity to the petitioners by Registered A.D.Post of putting forward their case in addition to the material which is produced in the petition. After the aforesaid process is undertaken, the appropriate decision shall be taken by the District Collector / Committee for regularization of the possession of the forest tribals or otherwise as early as possible preferably within period of six months from the receipt of the order of this Court.

(e) Until the decision is taken and is communicated to the petitioners by Registered A.D.Post, the interim order passed by this Court of protecting the possession of the petitioners shall continue to operate.

7. The petition is disposed of in terms of the aforesaid directions. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(Jayant Patel,J)

srilatha